

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

DATE: December 7, 2004

TO : Rosemary Pye, Regional Director  
Region 1

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: St. Gobain Abrasives, Inc.  
Case 1-CA-42006

512-5006-6767-6700

This case was submitted for advice as to whether the Employer issued an unlawful threat to close by (1) a statement it made in interviews that was quoted in a local newspaper column, and (2) posting a copy of a Wall Street Journal article about the Employer on its bulletin boards.

We conclude that neither the Employer's statement in a local newspaper, nor its posting of the Wall Street Journal article, were unlawful threats of plant closure.

### **FACTS**

St. Gobain (Employer) operates an abrasives plant in Worcester, Massachusetts. UAW Region 9A has represented employees at the plant since 2001. The parties have been engaged in contract talks, but have not reached a collective-bargaining agreement. Since the Union election campaign, the Employer has received criticism from local state, and national politicians, as well as local religious leaders for its handling of contract negotiations. For instance, politicians have sent numerous letters to the Employer expressing concern over the lengthy contract negotiations. Political leaders have also spoken at Union rallies and joined a Union picket line.<sup>1</sup> When the Employer refused to allow a prominent U.S. Senator and Congressman to attend a collective-bargaining session on behalf of the Union, they both appeared at a press conference and accused the Employer of bargaining in bad faith. In October 2003, prominent politicians secured federal funding for beryllium screening of the Employer's former employees, and the City of Worcester has demanded that the Employer certify that a building it had offered the City is beryllium-free.<sup>2</sup> In May 2004,<sup>3</sup> Worcester Mayor Timothy Murray wrote a letter to the

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<sup>1</sup> The strike lasted one week in November 2003.

<sup>2</sup> Occupational exposure to beryllium can lead to serious health conditions similar to asbestosis. The Employer has not used beryllium for many years.

<sup>3</sup> All remaining dates are in 2004 unless noted.

Mayor of Paris, home of the Employer's corporate parent, requesting that he intervene in the parties' contract negotiations, stating that the ongoing tension has tarnished the Employer's reputation.

As a result of this political pressure, the Employer addressed a meeting of local business leaders on June 8 to discuss its concerns about receiving unfair treatment from the political, religious, and media establishments. The Employer began the meeting by reading from a prepared script in which it stated that its concerns were with the political establishment, not the Union. The publisher of the local paper, the Worcester Telegram and Gazette, attended this meeting, and the newspaper later contacted the Employer for an interview for one of its columns. The Employer agreed to the interview.

#### 1. Worcester Telegram and Gazette

A column written by Robert Nemeth appeared in the newspaper on Sunday, July 25, and discussed the ongoing tension between the Employer, the Union, and the community. Nemeth wrote, in relevant part:

An aggressive union movement pitted employees against each other. Ever since the United Auto Workers won a narrow victory to represent about 800 workers at Saint-Gobain abrasives operations in Greendale, tension has been mounting between management, the union, the political establishment and segments of the community.

There has been talk about Saint-Gobain closing shop and leaving Worcester altogether. 'No decision has been made yet (about future plans) but if things keep going wrong, sooner or later the company's patience will run out,' said Dennis Baker, senior adviser, during a series of interviews with company officials, city and political leaders.<sup>4</sup>

#### 2. The Wall Street Journal

On September 3, the Friday before Labor Day, the Wall Street Journal published an article based in part on Nemeth's July 25 column. The article opened by claiming that Labor Department job statistics, released that day, were "sure to become a cudgel in the Presidential campaign." The article then framed its central theme as one appropriate for Labor Day, namely, the "increasing[] difficult[y]" in

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<sup>4</sup> Emphasis added.

keeping manufacturing jobs in the United States. The article stated that "the same politicians moaning about job losses are a large part of the problem."

After framing its central topic, the article cited the Employer's experience in Worcester as an example of the "difficult[ies]" faced by the manufacturing industry. In profiling the Employer, the article mentioned the Employer's contributions to the Massachusetts economy. Referring to Dennis Baker, the Employer's Senior Advisor to the President, the article stated:

Mr. Baker notes that the steel industry, a big customer for abrasives, is moving offshore and he says the challenge is to 'sustain jobs where the product is a commodity-type product and there's a high-cost labor aspect' to making it. 'When you're faced with the prospect of better costs in places like Texas, Mexico, China ... it makes doing business in a place like Massachusetts even more difficult.'

The article continued with:

Saint-Gobain hardly looks like a company eager to skip town and write off a relatively recent investment. It recognizes that employees have a right to organize and that the company has an obligation to bargain in good faith. And officials have been content to work toward a solution to what is essentially a private company's internal labor dispute. What the manufacturer hadn't expected is the relentless political hostility.

The article then described politicians' efforts to pressure the Employer into signing a Union contract. It concluded by stating:

In today's global economy, the U.S. competitive margin is narrowing all the time. Instead of adding costs to U.S. companies, American politicians ought to be looking for ways to reduce government burdens (on health care, lawsuits, regulation) so businesses don't feel obliged to flee offshore. At least Worcester residents will know whom to blame if the 1,700 jobs at Saint-Gobain up and quit the area.<sup>5</sup>

The Employer posted copies of this article on company bulletin boards at its Worcester facility.

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<sup>5</sup> Emphasis added.

The Union alleges that the Employer's statement in the Worcester Telegram and Gazette, and its posting of the Wall Street Journal article, amounted to threats of plant closure in violation of Section 8(a)(1).

### **ACTION**

We conclude that neither the Employer's statement in the Worcester Telegram and Gazette, nor its posting of the Wall Street Journal article, were unlawful threats of plant closure in violation of Section 8(a)(1). The Region should therefore dismiss the charge, absent withdrawal.

#### **1. Worcester Telegram and Gazette**

As a preliminary matter, we accept the Employer's contention that its statement alleged as a threat was a response to pressure the Employer was receiving from the political community, and not in direct response to the Union, per se. However, we do not necessarily agree that because the statement was directed at the political community that it is removed from the ambit of protection afforded by the NLRA. The political and religious leaders pressuring the Employer to accept a contract were acting on behalf of the Union and in support of employees' Section 7 activity. Without deciding, we therefore assume, arguendo, that the Employer's statement was in turn directed to Section 7 activity, which had formed the basis for the political pressure faced by the Employer.<sup>6</sup>

With regard to the statement itself, it is well-established that an employer can predict the consequences of unionization on its business as long as the prediction is "carefully phrased on the basis of objective fact to convey [its] belief as to demonstrably probable consequences beyond [its] control."<sup>7</sup> Although we assume, arguendo, that the Employer's reference to "things ... going wrong" was in reference to Section 7, as well as political activity, the statement does not predict any consequence to a continuation of either form of activity. Although the Employer stated that its "patience" would run out, the statement does not indicate when this will occur, what will precipitate it, or indeed, any consequence to its occurrence.<sup>8</sup> In these

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<sup>6</sup> See generally Eastex, Inc. v. NLRB, 437 U.S. 556, 565 (1978) (section 7 includes employees' attempts to improve conditions through "channels outside the immediate employee-employer relationship").

<sup>7</sup> NLRB v. Gissel Packing Co., 395 U.S. 575, 618 (1969).

circumstances, the Employer's vague reference to its "patience" does not amount to an unlawful threat of closure in violation of Section 8(a)(1).<sup>9</sup>

The context in which the Employer's statement was made lends further support to this conclusion. Notably, the statement was made during interviews in which the Employer was asked to comment on "talk" in the community that it might leave Worcester. It is evident, therefore, that the Employer itself did not raise the issue of leaving Worcester, but merely responded to interview questions regarding rumors in the community that it might do so. In response to those questions, the Employer clearly stated, "[n]o decision has been made."

Finally, the Employer's statement is quoted, and distinguishable from the views of the columnist. In these circumstances, where the Employer's factual statement is itself lawful and easily separated from the opinions expressed by the author, the Employer was under no obligation to disavow the statements or views of the columnist.<sup>10</sup>

## 2. The Wall Street Journal

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<sup>8</sup> See Enjo Architectural Millwork, 340 NLRB No. 162, slip op. at 2 (December 31, 2003) (employer's statement lawful, where it asked employees to consider employer's present noncompetitiveness when deciding about unionization, without "expressly or implicitly predicting any adverse consequences").

<sup>9</sup> See, e.g., Miller Industries Towing Equipment, 342 NLRB No. 112, slip op. at 2 (September 17, 2004) (employer's statement that possibility of layoffs depended on whether union forced layoff held not violative where testimony regarding statement was vague, made only general references to "possibilities," and did not detail how or why union would force employer to lay off employees). See also CPP Pinkerton, 309 NLRB 723, 724 (1992) (employer's letter to employees not objectionable where it referred to possibility, not probability, that third-party contracts could be jeopardized if union won election; no adverse consequences predicted).

<sup>10</sup> Compare Arkansas Lighthouse for the Blind, 284 NLRB 1214, 1218 (1987), enf. denied on other grounds 851 F.2d 180 (8<sup>th</sup> Cir. 1988) (employer sought no retraction of unlawful statement printed in newspaper article, nor disavowal of article, in which employer stated that issue in union campaign was "whether we allow the [u]nion to shut down the Lighthouse or not").

The Union argues that the article's statement, "[a]t least Worcester residents will know whom to blame if the 1,700 jobs at Saint-Gobain up and quit the area," is a threat of plant closure, and alleges that the Employer adopted that unlawful threat, in violation of Section 8(a)(1), by posting the article on its bulletin boards.<sup>11</sup> Contrary to the Union's allegation, the Wall Street Journal article overall, and the identified statement in particular, is not an unlawful plant closing threat directed at Section 7 activity. As such, the Employer did not violate Section 8(a)(1) by posting the article on its bulletin boards.

Specifically, the opinions expressed in the article are based on objective facts, including the economic barriers faced by companies operating in Massachusetts, challenges faced by the industry in competing in a global market, and the flight of some businesses overseas.<sup>12</sup> The article's central theme is thus based on its view of economic realities, rather than antiunion principles.

Moreover, to the extent that the thrust of the Wall Street Journal article suggests that the Employer might close its plant as a result of political pressure, that result must be viewed within the overall context of the article. The article concludes by blaming "American politicians" in the event Worcester jobs "up and quit the area." The article, published on September 3, was plainly written as a political piece, specifically timed for the Labor Day holiday and meant as a caution to the political establishment. The article specifically blames politicians for being "a large part of the problem" faced by U.S. manufacturers in general, and criticizes them for condemning the Employer's bargaining stance while ignoring the economic benefits the Employer brings to the state. Thus, the writer

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<sup>11</sup> See Marathon LeTourneau Co., 208 NLRB 213, 213, 220 (1974), enfd. mem. 498 F.2d 1400 (5<sup>th</sup> Cir. 1974) (employer threatened employees with plant closure by posting newspaper editorials containing statement, "[i]f the [u]nion wins, we can assure you that there will be total disorder and all the workers of [the employer] will meet the same fate as those at Pan American that had to shut its doors").

<sup>12</sup> See Miller Industries Towing Equipment, 342 NLRB No.112, slip op. at 2-3 (employer's prepared statements regarding its economic condition lawful in part where based on demonstrable facts, including sales and earnings (loss) figures, verifiable accounts of past events, and a declining market).

merely uses the Employer as an illustration to support the author's political polemic.

Finally, any suggestion that the Employer's response to this political pressure may be directed at Section 7 activity is vitiated by the article's description of the Employer as one that recognizes employees' Section 7 rights and its own obligation to bargain in good faith. The article states that the Employer has been working toward a contract with the Union, but "hadn't expected ... the relentless political hostility." The article thus portrays the Employer as a lawful negotiator, and disclaims any suggestion of interference with Section 7 rights.

Accordingly, the Region should dismiss the charge, absent withdrawal, as the Employer did not violate Section 8(a)(1) either by its statement in the Worcester Telegram, or by posting the September 3 Wall Street Journal article.

B.J.K.